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the study of the Institutes of Roman law deals mainly with this later system. Less defensible, as the author himself feels, is the amount of space devoted, in so elementary a book, to recent archaeological and ethnological investigations that throw light upon the beginnings of Italian civilization and the origins of the Roman people. It is fortunate, however, that Dean Walton disregarded his scruples in this matter. These early chapters the purely practical civil-law student may omit, but all others will be grateful for a concise summary of interesting discoveries and theories for which they would otherwise be forced to search through many books and journals.

Least satisfactory, to the reviewer, are the two chapters on the rise of the *jus gentium*. If the author, before taking up the development of the edict of the city prætor, had considered the way in which the formulary procedure and most of the new law of property and of contract appear to have developed in the administration of justice to Rome's provincial subjects, especially in the court of the foreign prætor at Rome, he could have made the passage of the *lex Aebutia* and the subsequent reformatory activities of the city prætor much more intelligible. It must be said, however, that most histories of Roman law are unsatisfactory in this respect. It is true that we know little of the development of the provincial edicts and of the edict of the foreign prætor; but much of this history can be reconstructed with a high degree of probability by inference from later conditions, and if a tithe of the labor that has been devoted by European scholars to the Roman civil law before the XII Tables had been bestowed upon the history of the *jus gentium* from 250 B. C. to 150 B. C., the results would have been far more worth while.

In the reconstruction of the older civil law there are several points in which the reviewer cannot agree with the conclusions of the author; but this is not the place in which to renew ancient controversies about the original character of *nexum* or the significance of the *uti legassit* clause of the XII Tables. Besides, these are highly debatable matters in which conflicting views are rationally tenable. In one matter, however, it may be noted that Dean Walton has missed a simple and obvious explanation of a political change. The gradual transfer of legislative power from the assembly of the centuries to the assembly of the tribes or wards was at least in part due to the fact that any tribune could prevent a consul or prætor from submitting a bill to the centuries, while neither consul nor prætor could similarly arrest the action of the tribes upon a bill proposed by a tribune.

Commendable, in the reviewer's opinion, even in an introductory treatise, is the use that Dean Walton has made of the comparative method in dealing with the problems of Roman legal development.

Munroe Smith.

HANDBOOK ON THE LAW OF JUDICIAL PRECEDENTS. By HENRY CAMPBELL BLACK. St. Paul, Minnesota: WEST PUBLISHING COMPANY. 1912. pp. xv, 768.

Probably it is safe to assert that this is the biggest book ever published on the subject of judicial precedents. That the work is as great as it is bulky, the reviewer is not ready to affirm. He does believe, however, that it will be of real service to the practitioner, as the author claims it will be, "in the preparation of briefs and the argument of causes, furnishing him with a full discussion of the rules

which the courts themselves have prescribed for their governance in these matters and an abundant citation of authorities to support his criticisms and contentions." Indeed, the excerpts from judicial opinions are so numerous and extended as to suggest the view, that the author hoped to spare the brief writer the task of examining the original reports.

That the work will prove as useful to the student, as to the practitioner may be doubted, notwithstanding the confident assertion of the author. It does not appear to be preeminently scientific, though its alternative title is "The Science of Case Law." His treatment of the subject is not as analytical and logical as it is desultory and discursive. Judicial precedents are dealt with from many points of view, but the reader finds difficulty in discovering *the law* of judicial precedents which the author sought to evolve. His attention is so attracted—at times distracted—by rare and interesting trees that he seldom gets a glimpse of the forest.

How broad and diversified the area of this treatise really is may be gathered from the following breath-exhausting sentence in the Preface: "The work has been made to include an extended consideration of the nature and authority of judicial precedents; their place in comparative jurisprudence and in equity; the rules which govern the interpretation of judicial decisions and opinions; the processes or analogical argument of combining cases; the various and complicated considerations which may affect the force and value of non-obligatory precedent; the nature of dicta and the method of their detection and the reasons for their want of authority; the general doctrine of *stare decisis*, with its special applications and cases of constitutional and statutory construction, to those judgments which have become "rules of property," and to "the law of the case"; the authority of precedents as between the several courts of the federal system; the use of precedents from other states and foreign countries, with the various causes which may affect their rank in the scale of authority, the reasons for approving them or for criticising them, and the underlying principles which induce the courts to follow "the better reason" or the "general current of authority"; the effect of the decisions of the United States Courts as authorities in the courts of the states; the great and difficult subject of the cases in which the federal courts are constrained to accept and follow the decisions of the state courts and those in which they hold themselves free to form an independent judgment; and finally, the effect of the reversal of overruling of previous judicial decisions."

Francis M. Burdick.

A TREATISE ON NEW TRIAL AND APPEAL. Presenting and illustrating the laws and rules of practice in California, Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wyoming. By ROBERT Y. HAYNE of the San Francisco Bar. Revised and re-edited to January, 1912, by J. R. PRINGLE of the San Francisco Bar and W. H. HYATT of the Los Angeles Bar. San Francisco: BANCROFT-WHITNEY COMPANY, 1912, Vol. I, pp. cclvi, 1-878; Vol. II, pp. 879-1902.

The first edition of this work, edited by Mr. Hayne, appeared in 1883. The destruction by fire in 1906 of the publisher's plates to this earlier edition induced Mr. Pringle and Mr. Hyatt to undertake the present revision.